

[Cite as *Moody v. Ohio Rehab. Serv. Comm.*, 2002-Ohio-3229.]

IN THE COURT OF CLAIMS OF OHIO

EUGENE P. MOODY	:	
Plaintiff	:	CASE NO. 2000-07706
v.	:	<u>DECISION</u>
OHIO REHABILITATION SERVICES COMMISSION	:	Judge Russell Leach
Defendant	:	
::::::::::::	:	

{¶1} Plaintiff brought this action against defendant seeking to recover damages in a breach of contract action. Specifically, plaintiff seeks reimbursement for a tax (along with penalties and interest) assessed against him by the Internal Revenue Service (IRS) on a \$20,000 settlement that plaintiff received from defendant in 1996. The parties agreed to submit the case on briefs and joint stipulations of fact.

{¶2} Plaintiff was formerly employed by defendant, Ohio Rehabilitation Services Commission (ORSC). Plaintiff and defendant executed a settlement agreement (agreement) in December 1996 whereby plaintiff agreed to: resign his position with ORSC, dismiss a federal court action that was pending at the time, and withdraw all pending complaints and grievances which he had filed against defendant. In consideration for these concessions, defendant agreed to pay plaintiff \$20,000 in a lump sum.

{¶3} At issue is the following language in Clause 5 of the agreement:

{¶4} “If during the Calendar Year 1997, due to no fault of his own, Mr. Moody receives a final decision from the Internal Revenue Service(IRS) for a tax amount due upon the \$20,000, ORSC will reimburse Mr. Moody for the tax which was due and paid to the IRS solely [sic] for the \$20,000.”

{¶5} It is undisputed that Mr. Moody did not receive notice of or pay a tax due on the \$20,000 in 1997. Plaintiff admits that the IRS notified him on July 14, 1999, that the settlement monies were subject to a tax. Moody paid at least \$6,280.15 to the IRS in taxes, penalties and interest.

{¶6} Plaintiff contends that the language of the agreement obligates defendant to reimburse him for the full amount that he paid to the IRS as a result of the \$20,000 lump sum payment; he argues that the term “Calendar Year 1997” relates to plaintiff’s entire tax liability arising from the lump sum payment received in 1996. However, plaintiff submits that since the IRS does not always issue tax determinations in the calendar year immediately following the year income is earned, plaintiff should not be penalized by the time constraints listed in the agreement. Plaintiff declares that the language in Clause 5 is ambiguous because each party has construed it differently. Plaintiff then reasons that the court should look to the intent of the parties in deciding the outcome of this case. Plaintiff insists that the intent of the parties was to place all of the tax burden on defendant alone and that this aspect of the agreement was integral to plaintiff’s acceptance of the settlement offer.

{¶7} Defendant counters that it is excused from performance because the language in Clause 5 created a condition precedent which was not fulfilled. Specifically, defendant posits that the introductory phrase, “If during the Calendar Year 1997” means

that an event must occur during the months of 1997 from January through December for defendant to be bound by the remainder of the terms in the clause. Because plaintiff did not receive a final decision from the IRS in 1997 regarding the amount of the tax owed on the \$20,000, defendant asserts that it is not required to reimburse plaintiff for the tax assessment levied in 1999. According to defendant, Clause 5 specifically obligated defendant only if such action was completed during calendar year 1997. Defendant also maintains that the language of Clause 5 is clear and unambiguous. Moreover, in the absence of confusion or ambiguity, defendant contends that the court must give each word its plain and ordinary meaning and must presume that the words selected express the intent of the parties. Finally, defendant stresses that the commonly accepted meaning of the words should be given deference in order that the parties to any contract may reasonably rely on the future enforcement of the agreement as written.

{¶8} Upon review of the documents submitted and the case law cited herein, the court makes the following determination. “A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty.” *Ford v. Tandy Transp., Inc.* (1993), 86 Ohio App.3d 364, 380, citing Restatement of the Law 2d, Contracts (1981) 5, Section 1. In order for a party to be bound to a contract, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds of both parties. *Episcopal Retirement Homes, Inc. v. Ohio Department of Indus. Relations* (1991), 61 Ohio St.3d 366, 369. A condition precedent is a condition which must be performed before the obligations in the contract become effective. *Troha v. Troha* (1995), 105 Ohio App.3d 327, 334. It requires

that an act occur before a duty to perform ensues and that failure of the initial act to occur relieves the parties from performance. Here, the parties agreed that defendant was responsible for the tax on the settlement amount if notice of the amount due was received by plaintiff before December 31, 1997, and if the tax was paid by plaintiff. The term “Calendar Year” is not defined in the contract but it does have a plain and ordinary meaning. The words in a contract shall be accorded their plain, ordinary meaning unless to do so would create an absurd result. *Alexander v. Buckeye Pipeline* (1978), 53 Ohio St.2d 241. The court finds that the language in Clause 5 is clear, specific and subject to only one interpretation. Here the term “Calendar Year” encompasses those days which fall between January 1 and December 31, 1997. Since the condition precedent did not take place, defendant was excused from performance of the promise to pay the tax.

{¶9} The intent of the parties is presumed to reside in the language they chose to employ in the agreement. *Kelly v. Medical Life Ins. Co.* (1987), 31 Ohio St.3d 130, citing *Blosser v. Enderlin* (1925), 113 Ohio St. 121, paragraph one of the syllabus, approved and followed. Defendant granted plaintiff twelve months to seek and receive a determination of the tax amount owed to the IRS. Once the end of calendar year 1997 passed without notice having been given to plaintiff about tax due on the settlement, defendant’s responsibility under Clause 5 terminated. The fact that plaintiff did not receive notice until 1999 does not alter the significance of the language selected for inclusion in the agreement. Moreover, the court finds it reasonable that defendant would place some limitation on the length of time that defendant would be required to keep funds encumbered in order to satisfy its obligation

under the contract. Therefore, the court concludes that there was no breach of the contract by defendant and, thus, defendant is not liable to plaintiff for damages in this case.

RUSSELL LEACH
Judge

Entry cc:

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